IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

WP(C).No. 20945 of 2006(R)

PETITIONER:

K.P. MOHAMMED ALI, AGED 46,
S/O. K.P. ALIYUMU HAJI, THORATHU-PULIKKATHODIYIL HOUSE, P.O.KUTTIPURAM, MALAPPURAM DISTRICT.

BY ADV. SRI.K.RAMAKUMAR,
SRI.T.RAMPRASAD UNNI.

RESPONDENTS:
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1. **THE DISTRICT COLLECTOR, MALAPPURAM.**
2. **THE TAHSILDAR, PONNANI.**
3. **THE SALES TAX OFFICER, PONNANI.**

BY SR. GOVERNMENT PLEADER SRI. MOHAMMED RAFIQ.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C).No.20945 of 2006-R

Dated this the 6th day of March, 2007

JUDGMENT

The petitioner has approached this Court challenging Exts.P1 and P2 notices issued under the Revenue Recovery Act to sell the property purchased by him from one of the legal representatives of a defaulter of sales tax. The brief facts of the case are as follows:-

2. One Mr. V.V. Muhammad was in default to the State towards sales tax arears for the years 1982-83, 1983-84, 1984-85. The total amount will come to Rs.64 lakhs. He died in 1985. His assets were inherited by his wife Smt. Fathima and 7 children. Revenue recovery notices under Sections 7 and 34 of the Revenue Recovery Act were issued to the said legal representatives on 23-4-1992. Thereupon, they filed O.P.6293 of 1992 before this Court challenging the revenue recovery notices. During the pendency of the original petition, the legal representatives partitioned the landed properties of the defaulter in 1997. Finally, the writ petition was dismissed on 27-9-1998. Smt. Fathima, the widow of the defaulter sold a portion of her share to the petitioner herein on 24-2-1999. In view of the dismissal of the writ petition filed by the legal representatives all the properties of the legal representatives including the parcel of land

assigned were attached by the revenue recovery officials on 20-2-1999. The transfer in favour of the the petitioner was immediately after the attachment. The petitioner herein challenges the revenue recovery proceedings by filing O.P.2887 of 2002. The said writ petition was disposed of by Ext.R2(a) judgment holding that the sale of the property belonging to the petitioner may be made after selling the properties in the possession of the legal representatives. The judgment was rendered on 26-2-2002. Later Exts.P1 and P2 have been issued to sell the property of the legal representatives of the petitioner. Now, this writ petition is filed challenging Exts.P1 and P2 on the ground that the same cannot be done in view of the judgment in State of Karnataka Vs. Shreyas Papers (P)Ltd (2006 (1) SCC 615).

2. The respondents have filed a counter affidavit in which it is stated that since the properties in the possession of the legal representatives are not sufficient to satisfy the dues payable to the Government, the property of the petitioner is also put to auction.

3. Heard the learned counsel on both sides. The petitioner is bound by the judgment in Ext.R2(a). It permitted the sale of the property of the petitioner if the properties of the legal representatives are not sufficient to meet the claim of the Government. So, the present writ petition is not maintainable. Further, the decision relied

on by the petitioner has no application to the facts of this case. It was a sale made by the Karnataka State Financial Corporation of a property taken over under Sec.29 of the State Financial Corporation Act. The sale was made and the property was assigned free of all encumbrances. Later the Karnataka Government claimed against the property contending that the sales tax dues are payable by the original owner. In that context the Apex Court held that bonafide purchaser cannot be made liable. In this case, the partition of the property and the assignment made thereafter took place long after the revenue recovery notices were issued in 1992. Therefore, the claim of the petitioner is plainly unsustainable. Accordingly, the writ petition is dismissed.

K.BALAKRISHNAN NAIR, JUDGE.

MS